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**Issue Date: 10 December 2004**

Case No. 2004 LHC 01096
2004 LHC 01097

OWCP No. 15-45386
15-192595

*In the Matter of*

DEBORAH S. WILSON,
*Claimant*
v.

WASHINGTON GROUP INTERNATIONAL INC.,
*Employer*
and

LIBERTY MUTUAL INSURANCE COMPANY,
*Insurance Carrier*

Appearances:
E. Paul Gibson, Esq., for Claimant
Allison A. Stover, Esq., for Claimant
Kurt A. Gronau, Esq., for Employer

Before:
RICHARD E. HUDDLESTON
Administrative Law Judge

## DECISION AND ORDER

This proceeding involves a claim for permanent total disability from an injury alleged to have been suffered by Claimant, Deborah S. Wilson, covered by the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901 *et seq*. (Hereinafter referred to as the "Act"), as extended to the *Defense Base Act*, 42 U.S.C. §1651 et seq. Claimant alleges that she was injured after developing chronic diarrhea while working on Johnston Atoll for Employer, Washington Group International, Inc.; and that as a result of poor medical care that severed her sphincter muscle, she continues to suffer from chronic diarrhea and depression.

The claim was referred by the Director, Office of Workers' Compensation Programs to the Office of Administrative Law Judges for a formal hearing in accordance with the Act and

the regulations issued thereunder. A formal hearing was held on August 10, 2004. (TR).[1] Claimant submitted fifty-five exhibits, identified as CX 1 through CX 55, which were admitted without objection. (TR. at 14). Employer submitted three exhibits, EX 22[2] through EX 24, which were admitted without objection (TR. at 15). The record was held open for post-hearing briefs until October 29, 2004. Claimant submitted her brief on November 3, 2004. Employer submitted its brief on November 8, 2004.

The findings and conclusions which follow are based on a complete review of the record in light of the argument of the parties, applicable statutory provisions, regulations, and pertinent precedent.

## ISSUES

The issues in dispute are whether Claimant's injury is causally related to her employment for Employer on Johnston Atoll, and if so, the nature and extent of such injuries.

## STIPULATIONS

At the hearing, Claimant and Employer stipulated that:

1. The LHWCA, 33 USC §901 *et. seq.*, as amended, applies to this claim;

2. There was an employer/employee relationship at the time of the injury;

3. The Notice of Controversion was timely filed.

4. At the hearing, the parties stipulated that Dr. Robert Edmund Brabham is an expert in Vocational Rehabilitation and Psychology.[3]

(JX 1).

## DISCUSSION OF LAW AND FACTS

*Testimony of Claimant*

Claimant is a fifty-one year old female who worked for Employer on the remote location of Johnston Atoll. Claimant testified that she never suffered from any major health problems between her high school years and the time she turned forty. (TR. at 39). Claimant additionally noted that prior to her work with Employer, she never had a problem with chronic diarrhea. (TR. at 39).

[1] EX - Employer's exhibit; CX- Claimant's exhibit; and TR - Transcript.
[2] EX 22 as submitted at the hearing contained missing transcript pages of the deposition of Dr. Lahr. A complete copy of the transcript was re-submitted by fax on December 1, 2004, and admitted as EX 22 A.
[3] Tr. at 73.

Claimant testified that she initially suffered from an anal abscess in 1989. (TR. at 39). Claimant consulted a doctor, who drained the abscess and prescribed Claimant antibiotics, which sufficiently treated the problem. Claimant noted that she returned to work the day immediately following the treatment. (TR. at 40). Claimant agreed that her treating physician did not provide an opinion as to the cause of this abscess. (TR. at 64). Claimant did acknowledge that at the time of the occurrence of her first abscess, she was getting over the stomach flu, but was unaware of whether this caused her condition. (TR. at 65). Claimant testified that she did not suffer from an abscess again until June of 1996. (TR. at 40).

Claimant initially worked on Johnston Atoll for Harbert-Yeargin. Claimant testified that prior to arriving on Johnston Atoll for the first time, she underwent two medical physicals. (TR. at 41). Claimant noted that these physicals did not detect any problems, and that there was thus no delay in her ability to work on Johnston Atoll because of a physical or mental condition. (TR. at 41). Claimant explained that normal employment duty periods upon the island lasted for eight weeks, followed by a two week break off of the island. (TR. at 43).

In her testimony, Claimant explained that Johnston Atoll is located right next to the international dateline between Honolulu and Japan. (TR. at 41). Claimant described the island as half mile wide by two miles long. Claimant explained that Employer housed a plant on the island, within which VX, HD and Mustard weapons were destroyed. Claimant noted that there is also a plutonium area and a radiation area on the island. (TR. at 41).

Claimant testified that she switched jobs and employers on Johnston Atoll, and eventually came under the employ of Employer. Claimant testified that she was promoted to Travel Administrator for Employer in April of 1995. (TR. at 44). As travel administrator, Claimant oversaw the schedule of chartered flights on and off the island for the crew to go in and out on their two week rotations. (TR. at 44). Claimant also took care of all "Red Crosses," meaning that if anyone working on the island fell ill or had a death in the family, Claimant would assist that person in getting off of the island quickly. (TR. at 45). As a result, Claimant testified that she was on call twenty-four hours a day. (TR. at 45).

Claimant testified to the stark living conditions on the island, and noted the presence of large rats. (TR. at 41). Claimant opined that the "buildings would probably be condemned if they were in the United States." (TR. at 41). Claimant testified that the dining hall served very limited food selections, most of which was very spicy. (TR. at 41). Claimant explained that the food had to be spicy, because otherwise it would taste very bland. Claimant also noted the limited availability of fresh food on the island. (TR. at 43).

Claimant testified that her health began to decline until it got to the point where she could not eat without having a massive bought of diarrhea before finishing her meal. (TR. at 43). Claimant noted that in the beginning, when she was off of the island for her two week break, her system would return to almost normal after eating better food. (TR. at 43-4).

Claimant was working for Employer in June of 1996 when she developed painful and severe diarrhea, and thus sought assistance from the medical clinic on the island. Though

Claimant was diagnosed with a rectal abscess, she was sent back to her barracks. (TR. at 46). Claimant testified that her pain persisted and she continued to return to the clinic, but was initially not permitted to stay over night. (TR. at 46). Claimant noted that she was allowed a hot water whirlpool bath and was given pain relief medication as a form of treatment for her abscess. Claimant testified that the pain became so intense that she could not stand up, and her medical records noted that she had become septic and toxic. (TR. at 46).

Claimant testified that she attributes these health problems to the living conditions on Johnston Atoll. (TR. at 47.) Claimant explained that she did not have these bowel problems prior to her arrival on the island, and that after she would eat in the dining hall, she would suffer from massive diarrhea. (TR. at 47). Claimant noted that there was little choice in food, and that the water served was made from saltwater taken from the ocean. (TR. at 47).

Claimant was eventually permitted to move into the medical clinic on the island. (TR. at 47). There, she was given the treatment of a sitz bath and Pro-Form. Claimant testified that her physical condition at this period in time was "horrible," and noted that her white cell count was 28,000. (TR. at 48). By way of comparison, Claimant explained that a healthy white cell count typically runs from 4 to 9.8. (TR. at 49).

Claimant testified that while she was in the clinic, three airplanes came to and left the island, upon which she could have been transported to Honolulu for medical care. However, Claimant testified, Employer waited for a regularly scheduled flight a few days later to transport Claimant off of the island, so "[Employer] wouldn't have to pay for anything." (TR. at 48). Claimant noted that her release form Johnston Atoll was approved by the medical director on the island. (TR. at 48).

Claimant testified that upon her arrival in Honolulu, she was referred to Dr. Chung at Castle Hospital. An ambulance transported Claimant from the airport to the hospital, where she immediately underwent surgery performed by Dr. Chung to drain her anal abscess. (TR. at 49). The date of the surgery was June 9, 1996. (TR. at 51). Claimant remained in the hospital for four to five days, before being transferred to a local bed and breakfast for recuperation. Claimant testified that her abscess was so large at this point that a nurse had to come each day and pack it with gauze. (TR. at 50). Claimant was then permitted to return home to South Carolina, where she remained for three months until she was medically released to return to Johnston Atoll. (TR. at 50). Claimant returned to Johnston Atoll in September of 1996, and resumed her position of Travel Coordinator. (TR. at 51). Claimant testified that financial considerations prompted her return to Johnston Atoll, despite its harsh living conditions. (TR. at 65-6).

Claimant testified that she had no problems with diarrhea during her recuperation in South Carolina. However, her health problems resumed immediately upon her return to Johnston Atoll, and Claimant testified that she was constantly afflicted by chronic diarrhea. (TR. at 51-2.) Claimant noted that the living conditions, food and water, were the same after her return as they were during her first stay on the island. (TR. at 51). Claimant testified that she was taking the prescription medication Lomitil during this period, but this provided little relief from her chronic diarrhea. (TR. at 52).

Claimant testified that the chronic diarrhea affected her ability to work. Claimant explained that she often would have to leave her post to change clothes because of stool leakage. (TR. at 52). Claimant also noted that her abscess reoccurred in 1997. Claimant explained that this experience was different from that in 1996, because in 1997, she was immediately transported from the island to Honolulu for treatment. (TR. at 53). Claimant once again consulted Dr. Chung in Honolulu, who diagnosed Claimant as having a perirectal abscess plus a perirectal fistula. (CX 1). Dr. Cheung performed surgery on Claimant in October of 1997, in which he drained and removed her abscess and performed a perirectal fistulotomy. (TR. at 55).

Claimant testified that she again attributed the recurrence of the anal abscess to her living conditions on Johnston Atoll. (TR. at 53.) Claimant again cited her difficulty eating the food, the water, and the presence of rats on the island. (TR. at 54).

After recovering for a week in a motel following her 1997 surgery, Claimant returned to Johnston Atoll on October 20, 1997. (TR. at 55). Claimant testified that her immediate return to Johnston Atoll was required because there was no one to cover her position. (TR. at 55.) Claimant stated that her diarrhea was so severe following her 1997 surgery that, despite her continued use of her prescription medication, she was forced to wear diapers because she lacked the necessary muscle control with which to contain her diarrhea. (TR. at 55).

Claimant testified that she last worked on Johnston Atoll in January of 2001. Claimant explained that she returned to the United States for additional surgery. Claimant stated that Employer's policy stated that "if you are off island for more than six months, you are automatically terminated." (TR. at 57.) Claimant noted that she was going through a colostomy and sphincter-wrap when she was terminated. (TR. at 57).

Claimant testified that she was informed by her treating physicians that she was not able to work. (TR. at 58). Claimant explained on cross that she was informed of this fact by both Dr. Lahr and Dr. Santos. (TR. at 66). Claimant explained that the doctors' conclusion was prompted by the fact she was suffering from diarrhea, two abscesses, major migraine headaches, neck pain and eye infection. (TR at 66). Claimant attributes her diarrhea to her employment with Employer that required her to live on Johnston Atoll. (TR. at 67).

Claimant was also informed by Dr. Christopher Lahr, her treating physician in South Carolina, that her 1997 surgery performed by Dr. Chung was unsuccessful because it had divided her sphincter muscles. (TR. at 58). As a result, Claimant had to undergo five additional surgeries, including a colostomy performed by Dr. Lahr, all of which attempted to increase her control over her bowl movements. (TR. at 58). Claimant also consulted various doctors concerning the etiology of her health problems, but none were able to exactly pinpoint the exact cause of her diarrhea. (TR. at 59). Claimant noted that she never took legal action against Dr. Chung for the failed 1997 surgery. (TR. at 69).

Claimant testified that her series of surgeries and physical problems had a very negative effect on her mental state. (TR. at 60). Claimant explained that she has become a nervous

wreck, and her memory is awful. Claimant noted that her colostomy did not correct the situation, it merely contained it. As a result, Claimant stated that she is unable to go anywhere because the colostomy bag could break. Claimant shared several situations in which she suffered embarrassment as a result of the colostomy bag bursting in a public setting. For instance, Claimant testified to one particular occasion in which her colostomy bag busted while she was attending a funeral. As a result, Claimant testified that she had to shower at the woman's house, and borrow a pair of underwear because hers had been soiled. (TR. at 61). Claimant testified that the occurrences of these embarrassing incidents such as this one have caused her to become very depressed. (TR. at 61). Claimant also noted that she suffers from skin irritation when the bag bursts and the waste gets on her skin. (TR. at 62).

Claimant testified that she consulted Dr. McCarthy, a psychologist, regarding her depression. (TR. at 62). Claimant's treatment with Dr. McCarthy lasted for approximately one year. (TR. at 68). Claimant noted that Dr. McCarthy performed biofeedback, and prescribed Zoloft. (TR. at 68). Claimant testified that she ceased treatment with Dr. McCarthy when her health insurance through Employer ran out, and that she has not sought psychiatric care under Medicare. (TR. at 68).

Claimant testified that she links her depression to her physical problems. Claimant explained that she used to dance and socialize, and that her physical problems have halted her previously active lifestyle. (TR. at 63). Claimant acknowledged on cross that she feels as if she would not be depressed had it not been for her abscess and subsequent surgeries. (TR. at 67). Claimant testified that she currently feels that she could not work in a regular work environment. (TR. at 63). Claimant noted that her medication makes her very tired, and she faces the constant risk of her colostomy bag breaking. (TR. at 63).

Claimant testified that she currently supports herself with Social Security, and her medical care is provided though Medicare. (TR. at 63). Though she filed a Workers Compensation claim after ceasing work in 2001, she has not received any Workers Compensation benefits from Employer. (TR. at 59).

*Medical Evidence*

Dr. Sidney Morrison

Dr. Sidney Morrison initially examined Claimant on April 15, 1996 after Claimant sought treatment because she was suffering from intestinal bowel problems. (EX 23). Dr. Morrison testified that he performed a colonoscopy on Claimant on July 23, 1996, in an attempt to ascertain the cause of Claimant's diarrhea. (EX 23). Dr. Morrison testified that "everything looked fine" during the procedure. (EX 23). Upon the request of Claimant following this procedure, Dr. Morrison drafted a letter dated August 6, 1996, permitting Claimant to return to work. In this letter, Dr. Morrison noted that Claimant's abscess has healed, and attributed her diarrhea to "Irritable Bowel Syndrome." (EX 23). Dr. Morrison was unable to form an opinion as to the etiology of this condition, but agreed on cross during his

deposition that Claimant's symptoms began while she was working on Johnston Atoll for Employer. (EX 23).

Dr. Morrison once again saw Claimant on April 17, 1998, when Claimant consulted him complaining of continued diarrhea. Dr. Morrison noted that prior to this consultation, Claimant underwent surgery in 1997 performed by Dr. Chung, which intended to mend Claimant's recurrent abscess and a fistula. Dr. Morrison testified that he does not know what causes anal abscesses, and opined that it is conceivable that Claimant's problems could be a bacterial or amoebic pathogen in her intestinal tract. (EX 23). Dr. Morrison stated further that Claimant's rectal prolapse was caused by chronic diarrhea, and that he did not know the etiology of the diarrhea in question. (EX 23).

In 1998, Dr. Morrison performed a Delorme procedure and a posterior anoplasty on Claimant to correct her rectal prolapse that was likely caused by her chronic diarrhea. Dr. Morrison noted that there was some evidence that Claimant's 1997 procedure caused a deformity in her sphincter muscles. (EX 23). Dr. Morrison testified in his deposition, "[I]f some doctor goes in and cuts that fistula open, and in the process of doing that divides the muscle tissue, then, particularly in a patient who tends to have Irritable Bowel Syndrome and to have loose stools, you're – you're looking, you know, you may be faced with a real problem, a real symptomatic problem." (EX 23.) Because of the divided and weakened sphincter muscle, Claimant's chronic diarrhea resulted in fecal incontinence. (EX 23).

The last time Dr. Morrison saw Claimant was on June 16, 1998. Dr. Morrison testified that Claimant's condition was "much better." (EX 23). Dr. Morrison released Claimant from medical care at this time. Dr. Morrison noted that he did not impose any medical restrictions upon Claimant at this time. (EX 23).

Dr Christopher J. Lahr

Dr. Lahr is a colorectal surgeon who first examined Claimant on March 15, 2001. (EX 22-3). Dr. Lahr noted that prior to this visit, Claimant had undergone a Delorme procedure with anoplasty performed by Dr. Morrison. Dr. Lahr explained that this procedure was necessary because Claimant's sphincter muscles were divided during her 1997 surgery to drain her anal abscess and fistulotomy. Dr. Lahr said specifically, "The two operations for these abscesses left a large defect in her sphincter muscle posteriorly. The entire muscle is divided." (EX 22A-6).

Dr. Lahr testified that Claimant described her symptoms during their first visit as "chronic diarrhea for six years, since she has been overseas." (EX 22A-7). At the time of their visit, Dr. Lahr did not record his opinion as to the cause of Claimant's problems. However, with the benefit of hindsight, Dr. Lahr testified that he felt Claimant's chronic diarrhea at the time of his examination was caused by her weak sphincter muscles that resulted from her 1997 surgery. Dr. Lahr explained that Claimant underwent an incision and drainage of an anal abscess in 1996. She subsequently developed a recurrent abscess and fistula at the site of the abscess, which ultimately required another drainage and fistulotomy in 1997. Dr. Lahr

testified that abscesses "could happen to normal people without any predisposing cause." (EX 3A-8).

Dr. Lahr testified that during his treatment of Claimant, he continued Claimant on the medications Flagyl and Cholestyramine in an attempt to help alleviate her symptoms. Dr. Lahr noted that Claimant only saw very slight improvement from the use of these medications. Dr. Lahr also tried unsuccessfully to slow Claimant's bowel movements down though injections of Sandostatin. Dr. Lahr additionally performed an anal sphincter wrap on Claimant on July 8, 2001. While this procedure improved sphincter function somewhat, Claimant continued to suffer from fecal incontinence and severe chronic diarrhea. (CX 13). Dr. Lahr stated that he "was never really able to make any substantial changes in [Claimant's] symptoms." (EX 3A-9). Dr. Lahr also referred Claimant to two specialists, a gastroenterologist and an infectious disease expert, but noted no major breakthroughs were discovered through these consultations.

Dr. Lahr drafted a letter to Employer's personnel department on behalf of Claimant on July 26, 2001. In such letter, Dr. Lahr reviewed Claimant's medical treatment in 1996 and 1997 and noted that Claimant's operations for her abscesses divided her sphincter muscles. (CX 13). Dr. Lahr explained in a November 9, 2001 letter that in 1997, Claimant had developed a severe abscess that was watched for four days, but was not treated. Claimant was then referred to Dr. Cheung, who performed an incision and drainage of a perirectal abscess and perirectal fistulotomy. Dr. Lahr concluded that, though Dr. Cheung's report does not acknowledge that he cut the sphincter muscle, it was clear that from his description of the passage of the probe under the muscle that he did in fact severe Claimant's sphincter muscle. Dr. Lahr stated that this was the cause of Claimant's current incontinence and muscle weakness. (CX 13).

Claimant was never informed by Dr. Cheung that her sphincter muscle was divided during this procedure. (CX 13). Dr. Lahr recorded that Claimant did not learn of this fact until he performed an anal ultrasound, which revealed that Claimant had a complete defect in her sphincter muscles. As a result, Claimant was required to undergo sphincter repair. Dr. Lahr concluded, "I believe that this damage would not have occurred had she been treated more promptly when she initially presented with the pain." (EX 22). Unfortunately, Dr. Lahr noted, surgery was not able to correct her defect. Claimant had to wear a diaper at all times to contain all stool leakage, and Dr. Lahr concluded that she was totally disabled by this condition. (CX 13).

Dr. Lahr drafted a letter dated February 5, 2002, which recorded that Claimant remained totally incapacitated and disabled by severe diarrhea and fecal incontinence. Dr. Lahr again noted in this letter that Claimant's current fecal incontinence is caused from damage to her sphincter muscle suffered when her abscess was treated by Dr. Cheung in 1997. (EX 13).

Dr. Lahr attempted several conservative treatments but eventually determined that, due to Claimant's combination of chronic diarrhea and severed sphincter muscle, he had few choices of treatment left to pursue. Thus, Dr. Lahr performed a colostomy on Claimant in 2003 for her chronic fecal incontinence and chronic diarrhea. Dr. Lahr explained that a colostomy diverts stool away from the anus, and allows it to accumulate in a plastic bag

outside of the body. Claimant is thus now required to wear a colostomy bag at all times. Though Dr. Lahr's notes record that Claimant did well following the procedure, he noted on July 10, 2003 that Claimant had a problem when her colostomy bag came loose during a bowel movement while she was at a store (CX 13). Dr. Lahr also wrote that Claimant developed a rash on the part of her skin that is rubbed by the bag, and this makes it difficult for the bag to stay remain securely in place. (CX 13). Dr. Lahr additionally noted that when the colostomy bag breaks, waste can get on Claimant's skin and burn it. (TR. at 61).

Despite her colostomy, Claimant continues to suffer from chronic diarrhea and fecal incontinence and currently remains under the care of Dr. Lahr. (CX 13).

Dr. James W. Thrasher

Dr. Thrasher is a certified psychiatrist, who also has sub-specialty training in forensic psychiatry. (TR. at 18). Dr. Thrasher noted that his practice primarily deals with depression, anxiety and psychosis. (TR. at 18 – 19).

Dr. Thrasher examined Claimant and drafted a report documenting the visit on February 13, 2003 at the request of Employer. (TR. at 19). In completing this report, Dr. Thrasher interviewed Claimant, and reviewed a variety of Claimant's medical records and personnel records from Employer. (TR. at 20; CX 29). Dr. Thrasher's primary diagnosis of Claimant was "[m]ajor depression – single episode without psychiatric features." (CX 29). Dr. Thrasher explained that he diagnosed a "single episode" because this appeared to be the first and only episode of depression from which Claimant has suffered. Dr. Thrasher noted that single episode can last for a remarkable period of time, absent adequate treatment. (TR. at 20).

Dr. Thrasher positively linked Claimant's depression to her physical problems. (TR. at 21). Dr. Thrasher noted that Claimant had an anal abscess, several surgeries with less than desirable outcomes, and was suffering from many physical problems. (TR. at 21). Dr. Thrasher explained that Claimant's "single episode" of depression is related to all of these problems as a whole. (TR. at 21). Dr. Thrasher testified that he would have recommended as treatment of Claimant's depression a regiment of psychotherapy and drug treatment. (TR. at 22). Dr. Thrasher opined that the psychological treatment that Claimant had in fact received was only partial and that as a result at the time of his interview, Claimant had not reached Maximum Medical Improvement and was actually still quite depressed. (TR. at 23). Dr. Thrasher's report states specifically, "It is not clear that [Claimant's] depression has stabilized at this point." (CX 29).

On direct examination, Dr. Thrasher was asked to give an opinion about Dr. Brabham's conclusion that Claimant suffers from "recurrent" major depression and has a permanent total disability. Dr. Thrasher conceded that Dr. Brabham's evaluation of Claimant was more recent than his own. (TR. at 27). Dr. Thrasher explained did not consider Claimant permanent totally disabled at the time of his evaluation of her because he felt that Claimant had not been adequately treated. (TR. at 27). Dr. Thrasher stated that "there may be things that transpired" after his evaluation that could have changed this opinion. (TR. at 27).

Dr. Thrasher testified that he considered Claimant "treatable" at the time of his interview, and had she successfully pursued it his recommended regiment of treatment, she may have been able to return to full time employment. (TR. at 30). Dr. Thrasher suggested that Claimant continue on in psychotherapy and be prescribed psychotropic medication appropriate to address depression. (CX 29). Dr. Thrasher's report specifically opines, "With a good response to treatment, [Claimant] is not precluded from returning to her prior employment." (CX 29). Dr. Thrasher noted that the majority of patients he has treated with the therapy he recommended for Claimant "responded very nicely." (TR. at 29).

Dr. Robert Edmund Brabham

Dr. Brabham is a certified counseling psychologist and rehabilitation counselor. Dr. Brabham agreed on cross that twenty percent of his practice is dedicated to clinical psychology and individual patients. (TR. at 83). Dr. Brabham explained that he provides psychotherapy to depressed patients approximately one day a week. (TR. at 91).

Dr. Brabham initially evaluated Claimant in November of 2003. (TR. at 73). In drafting his report of Claimant's condition, Dr. Brabham also consulted several of Claimant's medical records. (TR. at 73). During his interview of Claimant, Dr. Brabham conducted psychological and educational testing on Claimant. (TR. at 74).

Dr. Brabham concluded that Claimant's IQ falls in the average-to-low range. (TR. at 75.) Dr. Brabham was surprised at this result and attributed it to Claimant's depression and medication. (TR. at 75). Claimant also scored lower than Dr. Brabham expected on the wide-range achievement tests. (TR. at 76). Dr. Brabham concluded from his psychological interview with Claimant that Claimant suffers from a pain disorder at a significant level, and that she meets all diagnostic requirements for depression. (TR. at 76). Dr. Brabham also noted that Claimant had an anxiety disorder was "related to her failure to not only improve, but to actually get worse. Procedures had not improved her conditions[. . .]" (TR at 77). Dr. Brabham additionally stated that Claimant was worrying about her age in relation to securing an income.

In considering all of these factors, Dr. Brabham felt that Claimant "had not responded well and would not be able to be treated with the usual therapy and activities and volunteer efforts that would have worked with some of my patients." (TR. at 78-9). Dr. Brabham ultimately concluded to a "very high" degree of medical certainty that Claimant would not be able to work in any gainful activity. (TR. at 79). Dr. Brabham further opined that "based on the number of months with no improvement," it would be unlikely if Claimant would be able to ever return to work. (TR. at 80).

Dr. Brabham agreed that the cause of Claimant's vocational hindrances and psychological problems are due to her fecal incontinence and the affects of the various corrective surgeries Claimant has endured over her course of treatment. (TR. at 80). Dr. Brabham explained that prior to the onset of her physical problems, Claimant "was working,

she was gainfully employed, she was earning good wages, and was not able to continue to do so as a result of all those things that we talked about here today." (TR at 81).

Dr. Brabham's report notes that the seriousness of Claimant's depression "is best emphasized by noting [that] only days prior to this evaluation, [Claimant] attempted suicide by an overdose of her psychotropic mediation, Risperdal." (CX 50). Dr. Brabham stated that Claimant is seriously depressed by her continued medical problems, inability to gain major improvement, and her growing financial distress. (CX 50). Dr. Brabham concluded with the following diagnosis of Claimant: "Pain Disorder Associated with Both Psychological Factors and Generalized Medical Conditions; Major Depressive Disorder, Now Recurrent, Severe, Without Psychotic Features; Generalized Anxiety Disorder." (CX 50).

Dr. Brabham stated on cross that he believes that Claimant had reached Maximum Medical Improvement at the time of the hearing. (TR. at 87). Dr. Brabham explained that the things that cause Claimant's depression, specifically her physical problems, have not improved and he is not optimistic about future improvement. (TR. at 87).

Dr. Brabham's report additionally noted that with Claimant's "approaching advanced age classification (Age 50), and the major limitations that her medical problems create, it is quite clear that she is, and will likely remain, unable to engage in any gainful employment." (CX 50). Dr. Brabham thus opined that Claimant is "unable to work in any gainful activity, and is likely to continue to be unable to return to work." (CX 50).

***Section 20(a) Presumption***

Section 20(a) of the Act, 33 U.S.C. § 920(a), creates a presumption that a claimant's disabling condition is causally related to her employment. In order to invoke the section 20(a) presumption, a claimant must prove that she suffered a harm and that conditions existed at work or an accident occurred at work that could have caused, aggravated or accelerated the condition. *Merrill v. Todd Pacific Shipyards, Corp.*, 25 BRBS 140 (1991); *Stevens v. Tacoma Boat Building Co.*, 23 BRBS 191 (1990). Claimant's credible subjective complaints of symptoms and pain can be sufficient to establish the element of physical harm necessary for a prima facie case and the invocation of the § 20(a) presumption. *See Sylvester v. Bethlehem Steel Corp.*, 14 BRBS 234, 236 (1981), *aff'd sub nom, Sylvester v. Director, OWCP*, 681 F.2d 359, 14 BRBS (5th Cir. 1982). Once the claimant has invoked the presumption, the burden of proof shifts to the employer to rebut it with substantial countervailing evidence. *Merrill*, 25 BRBS at 144. If the presumption is rebutted, the administrative law judge must weigh all the evidence and render a decision supported by substantial evidence. *See Del Vecchio v. Bowers*, 296 U.S. 280, 286 (1935).

I find that Claimant has established that she suffers a harm. Claimant was working for Employer in June of 1996, when she developed painful and severe diarrhea, and was diagnosed with a rectal abscess that required surgery. (TR. at 46). Claimant's medical records indicate that her abscess reoccurred in 1997, and Claimant was diagnosed as having a perirectal abscess plus a perirectal fistula. (CX 1). Dr. Cheung performed surgery on Claimant in October of 1997, in which he drained and removed her abscess and performed a perirectal fistulotomy.

(TR. at 55). Dr. Lahr, Claimant's current treating physician, noted in his deposition that Claimant's sphincter muscles were severed during this procedure. At the time of testimony, Claimant continued to suffer from severe diarrhea and fecal incontinence, and had to undergo a colostomy which requires Claimant to now wear a colostomy bag. Claimant is also suffering from depression as a result of her physical problems. I therefore find that Claimant has sufficiently established she suffers a harm.

The next question is whether Claimant has established that conditions existed at work that could have caused, aggravated or accelerated her condition. A claimant under the DBA must satisfy the same requirements as to proof of causation as any other claimant under the LHWCA. *See Piceynski v. Dyncorp*, 31 BRBS 559 (ALJ) (1997), *remanded at Piceynski v. Dyncorp*, (Unpublished) (BRB No. 97-1451)(July 17, 1998), and *reconsidered at* 36 BRBS 134 (ALJ) (1999). Under the DBA, however, the "condition or course of employment" standard has been expanded by the "zone of special danger" doctrine. The "zone of special danger" doctrine was first enunciated by the U.S. Supreme Court in *O'Leary v. Brown-Pacific-Maxon* as follows:

> The test of recovery is not a causal relationship between the nature of employment of the injured person and the accident. Nor is it necessary that the employee be engaged at the time of the injury in activity of benefit to his employer. All that is required is that the 'obligations or conditions' of employment create the 'zone of special danger' out of which the injury arose.

340 U.S. 504, 506-507 (1951).

The DBA provides a broad degree of coverage and entitlement to benefits. *Carlson v. Raytheon Services*, 33 BRBS 583, 589(ALJ) (1999). The test does not require that there be causation between the nature of the employment and the accident. *O'Leary v. Brown-Pacific-Maxon*, 340 U.S. 504, 507 (1951). The test was developed in cases involving the DBA because "the conditions of the employment place the employee in a foreign setting where he is exposed to dangerous conditions [. . .] [E]mployer can be said to create a zone of special danger by employing the employee in a foreign country." *Harris*, 23 BRBS 179. If the conditions of employment create a zone of special danger out of which the injury arises, then a causal connection exists.

Claimant argues that the conditions of her employment for Employer requiring her to live upon Johnston Atoll created a zone of special danger out of which her injury arises. Specifically, Claimant argues that "[b]ut for the living conditions on Johnston Atoll, [Claimant] would not have suffered from diarrhea; but for the diarrhea, the rectal abscess would not have occurred; but for the conditions including the lax medical care on the Johnston Atoll, the rectal abscess would not have been serious; but for the substandard medical care procured by her Employer, [Claimant] would not be disabled; and but for the physical disabilities, [Claimant] would not be depressed." (Cliamant's Post Hearing Brief at page 15.)

In support of this argument, Claimant testified that she had never suffered from chronic diarrhea and passed two medical physicals prior to her arrival on Johnston Atoll. She additionally passed two extensive medical physicals before being permitted to live and work on

the island. However, after living and working upon Johnston Atoll for a period of time, Claimant testified that her health began to decline until it got to the point where she could not finish a meal without having a massive bought of diarrhea. (TR. at 43). Claimant testified that she attributes these health problems to the living conditions on Johnston Atoll. (TR. at 47.) Claimant explained that she did not have these problems prior to her arrival on the island, and that after she would eat in the dining hall, where there was little choice and a great lack of fresh food, she would suffer from massive diarrhea. (TR. at 47).

Claimant additionally testified that she had no problems with chronic diarrhea during her recuperation in South Carolina following her 1996 procedure that treated her anal abscess. However, her health problems resumed immediately upon her return to Johnston Atoll, and Claimant testified that she was constantly afflicted by chronic diarrhea. (TR. at 51-2.) Claimant noted that the living conditions, food and water, were the same after her return as they were during her first stay on the island. (TR. at 51).

Claimant argues that her chronic diarrhea caused the rectal abscess. Though no doctor has been able to precisely pinpoint the etiology of Claimant's 1996 abscess, Claimant's proposition receives support from the deposition testimony of Dr. Lahr. Specifically, Dr. Lahr explained "most fistulas and abscesses result when bacteria in the stool gets in the crypts (pores on the anus) and then festers, produces puss and the pus then tunnels its way through the flesh out to the skin or out to the flesh of the – under the skin and that forms an abscess, and eventually it will rupture through the skin." (EX 22). Additionally, Dr. Morrison testified that it is not unusual for a patient that has chronic diarrhea to require a fistulotomy. Dr. Morrison explained that such a patient may have persistent discharge and drainage in the anal area, and he felt that this explained Claimant's condition in 1997. Dr. Morrison additionally noted that he was sure that "it was what caused her abscess back in 1996 too." (EX 23).

As a result of these abscesses, Claimant was required to undergo two surgeries, both of which were performed by Dr. Cheung. Claimant argues that that her botched 1997 surgery on the anal abscess caused by her chronic diarrhea is the reason for her current physical problems. Claimant stated that her diarrhea became so severe following her 1997 surgery that she continued using her prescription medication and was forced to wear diapers because she lacked the necessary muscle control with which to contain her diarrhea. (TR. at 55). Dr. Lahr testified that he felt Claimant's chronic diarrhea at the time of his examination was caused by her weak sphincter muscles that resulted from her 1997 surgery. Specifically, Dr. Lahr opined that Cliamant's current fecal incontinence is caused from damage to her sphincter muscle suffered when her abscess was treated by Dr. Cheung in 1997. (EX 22). As a result, Claimant had to undergo five additional surgeries, including a colostomy performed by Dr. Lahr, all of which attempted to increase her control over her bowl movements. (TR. at 58).

Claimant testified that she links her depression to her physical problems. Claimant explained that her physical problems have halted her previously active lifestyle, and acknowledges that she feels she would not be depressed had it not been for her abscess and subsequent surgeries. (TR. at 67). Claimant noted that her medication makes her very tired, and she faces the constant risk of her colostomy bag breaking. (TR. at 63). Both Drs. Brabham and Thrasher support this causal link between Cliamant's physical problems and her

depression. Dr. Brabham stated specifically that Claimant is seriously depressed by her continued medical problems, inability to gain major improvement, and her growing financial distress. (CX 50). Dr. Thrasher also positively linked Claimant's depression to her physical problems. (TR. at 21).

I find that conditions existed within Claimant's "zone of special danger" while she was living and working on Johnston Atoll for Employer that could possibly and potentially have caused the harm from which she now suffers. Claimant had little choice of where and what to eat while on the island, and her visits to the dining hall resulted in bouts of chronic diarrhea. Medical evidence establishes that her abscesses could have been caused when the bacteria in the persistent discharge from Claimant's diarrhea festered in the crypts on her anus. Her doctors agree that the 1997 treatment of such an abscess severed her sphincter muscle, which ultimately caused the myriad of physical and mental problems from which she currently suffers. Claimant's living and dining conditions were created by her overseas job for Employer, and thus fall within the special zone of danger from which Claimant's harm initiated. Thus, upon consideration of the evidence, I find that Claimant has established a prima facie case for compensation and is entitled to the presumption of Section 20(a) that her condition is causally related to the injury. The burden now shifts to Employer to rebut the presumption with substantial countervailing evidence

***Rebuttal of Section 20(a) Presumption***

Since the presumption is invoked, the burden shifts to Employer to rebut the presumption with substantial countervailing evidence which establishes that Claimant's employment did not cause, contribute to or aggravate her condition. *James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989); *Peterson v. General Dynamics Corp.*, 25 BRBS 71 (1991). "Substantial evidence" means evidence that reasonable minds might accept as adequate to support a conclusion. *E & L Transport Co., v. N.L.R.B.*, 85 F.3d 1258 (7th Cir. 1996). In cases arising under the DBA, it is appropriate to analyze whether the injury arose out of and in the course of employment under the "zone of special danger" doctrine. *See Harris v. England Air Force Base Nonappropriated Fund Financial Management Branch*, 23 BRBS 175 (1990).

Employer incorrectly appears to argue that that the "zone of special danger" test is limited to recreation activities which give rise to an injury. Contrary to Employer's assertion, the "zone of special danger" test is not limited to recreational activities. Rather, courts have been extremely liberal in construing scope of employment under the Act while in foreign countries. *Smith v. Southern Illinois University*, 8 BRBS 197 (1978) Indeed, merely employing an individual covered by the Act outside of the borders of the United States, has been held to create a "zone of special danger" under which injury can be extended to employment so as to be covered by the Act. *Ford Aerospace & Communications Corp. v. Boling,* 684 F.2 640 (9th Cir. 1982). In this case, the Ninth Circuit applied the zone of special danger test to compensate an employee who had heart attack while off duty in provided barracks in Greenland. *Id*. "It is the alien character of the locale which justifies a liberalization of the traditional standards for measuring the causal relationship between the employment and the injury." *Preskey v. Cargill, Inc.* 12 BRBS 917 (1980).

Thus, in the present case, the burden of proof rests with Employer to rebut the presumption with substantial evidence that Claimant's injury did not arise out of a zone of special danger created by Claimant's living and dining conditions on Johnston Atoll during her employment with Employer.

Employer must produce facts, not speculation, to overcome the presumption of compensability. Reliance on mere hypothetical probabilities in rejecting a claim is contrary to the presumption created by Section 20(a). *See Smith v. Sealand Terminal*, 14 BRBS 844 (1982). Rather, the presumption must be rebutted with specific and comprehensive medical evidence proving the absence of, or severing, the connection between the harm and employment. *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141, 144 (1990).

Employer argues that the Section 20(a) presumption has been rebutted based upon Claimant's failure to offer medical evidence that suggest Claimant's employment, and presumably living conditions on Johnston Atoll, created her anal abscesses. In support, Employer notes that Claimant suffered an anal abscess in 1989, which she herself conceded was unrelated to her employment on Johnston Atoll. Employer also highlight Dr. Morrison's testimony that he does not know precisely what causes anal abscesses, that they could be a functional disorder in the intestinal tract. Employer additionally notes that Dr. Lahr testified that anal abscesses can occur without any underlying, defect or trauma. Employer does not dispute the finding that Claimant's physical problems caused her depression.

This argument incorrectly places the burden of rebuttal upon the Claimant. Pursuant to §20(a), it has been presumed that the living conditions on Johnston Atoll are the cause of Claimant's medical problems. As stated above, Claimant testified that she initially developed diarrhea after eating at the dining hall on Johnston Atoll. Employer offers no other potential catalyst unrelated to the living and dining conditions on Johnston Atoll that could have caused Claimant's chronic diarrhea. Additionally, though no doctor could specifically pinpoint the precise cause of Claimant's abscess, Dr. Lahr testified that most abscesses result when bacteria in the stool gets in the crypts, as is presumed in the present case and has not been effectively disputed by Employer. Employer also has not offered evidence to contradict the sufficient medical evidence proffered by Claimant that establishes that her subsequent physical and mental problems stem from the 1997 treatment of these abscesses.

Upon consideration of the record, I find that Employer has offered mere speculation on the causation issue and has thus not met its burden of rebutting the Section 20(a) presumption. Employer's assertion that Claimant's abscesses were caused by unknown catalysts fails to provide even a suggested alternate cause of Claimant's injuries. Employer in the instant matter fails to provide substantial evidence that specifically and comprehensively establishes that the conditions of Claimant's employment did not cause, aggravate, or accelerate her injury. Therefore, I find that the Section 20(a) presumption is not rebutted and that Claimant's injury is compensable under the Act.

***Nature and Extent of Disability***

Having found that Claimant suffered a compensable injury, the nature and extent of her disability must be determined. The burden of proving the nature and extent of disability rests

with Claimant. *Trask v. Lockheed Shipbuilding Construction Co*., 17 BRBS 56, 59 (1980). Disability is generally addressed in terms of its permanent or temporary nature and its total or partial extent. The permanency of any disability is a medical rather than an economic concept. Disability is defined under the Act as an "incapacity to earn the wages which the employee was receiving at the time of injury in the same or any other employment." 33 U.S.C. § 902(10). Therefore, for Claimant to receive a disability award, an economic loss coupled with a physical and/or psychological impairment must be shown. *Sproull v. Stevedoring Servs. of America*, 25 BRBS 100, 110 (1991). Thus, disability requires a causal connection between a worker's physical injury and his inability to obtain work. Under this standard, a claimant may be found to have either suffered no loss, a total loss or a partial loss or a partial loss of wage earning capacity.

As to the nature of the benefits sought in the present case, Claimant seeks permanent disability benefits commencing January of 2001. Permanent disability is a disability that has continued for a lengthy period of time and appears to be of lasting or indefinite duration, as distinguished from one in which recovery merely awaits a normal healing period. *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649, *pet. for reh'g denied sub nom. Young & Co. v. Shea*, 404 F.2d 1059 (5th Cir. 1968)(per curium), *cert. denied*, 394 U.S. 876 (1969). A claimant's disability is permanent in nature if she has any residual disability after reaching maximum medical improvement. *Trask*, 17 BRBS at 60. Any disability suffered by Claimant before reaching maximum medical improvement is considered temporary in nature. *Berkstresser v. Washington Metropolitan Area Transit Authority*, 16 BRBS 231 (1984).

The Benefits Review Board has held that a determination that claimant's disability is temporary or permanent may not be based on a prognosis that claimant's condition may improve and become stationary at some future time. *Meecke v. I.S.O. Personnel Support Department*, 10 BRBS 670 (1979). The Board has also held that a disability need not be "eternal or everlasting" to be permanent and the possibility of a favorable change does not foreclose a finding of permanent disability. *Exxon Corporation v. White*, 617 F.2d 292 (5th Cir. 1980), *aff'g* 9 BRBS 138 (1978).

In the present case, Claimant argues that she is permanently disabled and offers in support the opinion of Dr. Brabham. Dr. Brabham testified that he believes that Claimant had reached Maximum Medical Improvement (MMI). (TR. at 87). Dr. Brabham explained that the factors that cause Claimant's depression, specifically her physical problems, have not improved and he is not optimistic about future improvement. (TR. at 87). Dr. Brabham's opinion receives support from Dr. Lahr who testified to the several unsuccessful treatments Claimant has endured in hopes of treating her chronic diarrhea and fecal incontinence. Dr. Lahr noted that he eventually had little choice left but to perform a colostomy on Claimant in 2003. However, despite this procedure, Dr. Lahr's office notes dated July 13, 2004 record that Claimant continues to suffer from chronic diarrhea and fecal incontinence. (CX 13.) Claimant also must deal with new problems stemming from her colostomy, such enduring the embarrassment of her colostomy bag breaking in public places, which has happened to her on several occasions since the procedure.

Employer argues Claimant is not permanently disabled because Claimant has not yet reached MMI. In support of this proposition, Employer offers the opinion of Dr. Thrasher. Dr.

Thrasher testified Claimant had received only partial psychological treatment, and that as a result at the time of his interview of her, Claimant had not reached MMI and was actually still suffered from depression secondary to her physical problems. (TR. at 23). Dr. Thrasher's report states specifically, "It is not clear that [Claimant's] depression has stabilized at this point." (CX 29).

Upon consideration of the record, I find the Claimant is permanently disabled. In so finding, I accord greater weight to Dr. Brabham's opinion that Claimant is totally disabled. Both Drs. Brabham and Thrasher positively linked Claimant's depression to her physical problems. (TR. at 21). Dr. Thrasher evaluated Claimant on February 13, 2003, before her colostomy was performed on February 26, 2003. In his testimony, Dr. Thrasher conceded that Dr. Brabham's evaluation of Claimant was more recent than his own. (TR. at 27). Dr. Thrasher stated that "there may be things that transpired" after his evaluation that could have changed this opinion." (TR. at 27). What in fact transpired after his evaluation was Claimant's colostomy. Despite this procedure, Claimant continues to suffer from chronic diarrhea and fecal incontinence. In addition, she now faces additional problems with her colostomy bag, which has often been the source of embarrassment and humiliation for her when it breaks in public places. As Dr. Brabham testified, these occurrences prevent Claimant from being treated with the usual therapy and becoming involved in activities and volunteer efforts that generally assist other depressed individuals. (TR. at 78-9). Dr. Brabham said that the physical problems that are the source of Claimant's depression have not improved and he is not optimistic about future improvement. (TR. at 87). This rationale is convincing, as Claimant has undergone treatment for her physical problems since 1996, yet still presently continues to suffer from chronic diarrhea. As her depression is linked to her physical ailments, I find her to be permanently disabled.

As to the extent of the benefits sought in the present case, Claimant seeks total disability benefits commencing January 10, 2001, through the present and continuing. To establish a prima facie case of total disability, a claimant must show that she is unable to return to her regular or usual employment due to her work-related injury. *Trans-State Dredging*, 731 F.2d at 200; *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP*, 592 F.2d 762, 765 (4th Cir. 1979); *Elliott v. C & P Tel. Co.*, 16 BRBS 89, 92 (1984); *Harrison v. Todd Pacific Shipyards Corp.*, 21 BRBS 339, 342-43 (1988). A claimant's credible testimony alone, without objective medical evidence, on the issue of the existence of disability may constitute a sufficient basis for an award of compensation. *Eller & Co. v. Golden*, 620 F.2d 71, 74 (5th Cir. 1980); *Ruiz v. Universal Mar. Serv. Corp*., 8 BRBS 451, 454 (1978). Once claimant cannot return to her usual work, she has established a prima facie case of total disability, and the burden shifts to the employer to establish the availability of suitable alternate employment. *Trans-State Dredging*, 731 F.2d at 200; *Caudill v. Sea Tac Alaska Shipbuilding*, 25 BRBS 92 (1991), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir. 1993).

Claimant ceased working for Employer in January of 2001, and has been unable to work at all since that date. Claimant testified that she currently feels that she could not work in a regular work environment. (TR. at 63). Claimant noted that her medication makes her very tired, and she faces the constant risk of her colostomy bag breaking. (TR. at 63). Dr. Brabham's report noted that with Claimant is also "approaching advanced age classification

(Age 50), and the major limitations that her medical problems create, it is quite clear that she is, and will likely remain, unable to engage in any gainful employment." Dr. Brabham thus opined that Claimant is "unable to work in any gainful activity, and is likely to continue to be unable to return to work." (CX 50).

Claimant has made a prima facie showing that she was totally disabled since January of 2001. Thus, the burden shifts to Employer to show suitable alternate employment. *Trans-State Dredging*, 731 F.2d at 200; *Rinaldi v. General Dynamics Corp.*, 25 BRBS 128, 131 (1991). However, in the instant matter, Employer has produced no evidence on the issue of suitable alternate employment. Therefore, Claimant is considered to be and I find that she was totally disabled from January of 2001 through the present and continuing.

***Compensation Rate***

For the purposes of Section 10 and the determination of the employee's average weekly wage with respect to a claim for compensation for death or disability due to an occupational disability, the time of injury is the date on which the employee or claimant becomes aware, or on the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability. *Todd Shipyards Corp. v. Black*, 717 F.2d 1280 (9th Cir. 1983); *Hoey v. General Dynamics Corporation*, 17 BRBS 229 (1985); *Pitts v. Bethlehem Steel Corp.*, 17 BRBS 17 (1985); *Yalowchuck v. General Dynamics Corp.*, 17 BRBS 13 (1985).

Though the surgery that severed her sphincter muscles that has been the main catalyst of Claimant's permanent total disability was performed in 1997, Claimant did not learn of its severe consequences until her treatment with Dr. Lahr in 2001. I thus find that Claimant's wages in the year 2000 best represent her average weekly wage in the year prior to her injury. Claimant's w-2 form of the year 2000 notes she earned $98,207.54 in wages, tips and other compensation. (CX 47). The parties have agreed that Claimant is entitled to the maximum compensation rate. The maximum compensation rate permitted for the period of October 1, 2000 to September 30, 2001 was $933.83. I therefore find Claimant is entitled to permanent total disability in the amount of $933.83 from the date she last worked on January 10, 2001 to the present and continuing.

**ORDER**

Accordingly, it is hereby ordered that:

1. Employer, Washington Group International, Inc, is hereby ordered to pay to Claimant, Deborah S. Wilson, permanent total disability benefits for the period of her last date of work on January 10, 2001 though the present and continuing, at the maximum compensation rate of $933.83 per week;

2. Employer is hereby ordered to pay all medical expenses related to Claimant's work related injuries;

3. Employer shall receive credit for any compensation already paid;

4. Interest at the rate specified in 28 U.S.C.§ 1961 in effect when this Decision and Order is filed with the Office of the District Director shall be paid on all accrued benefits and penalties, computed from the date each payment was originally due to be paid. See *Grant v. Portland Stevedoring Co.*, 16 BRBS 267 (1984);

5. Claimant's attorney, within 20 days of receipt of this order, shall submit a fully documented fee application, a copy of which shall be sent to opposing counsel, who shall then have ten (10) days to respond with objections thereto.

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RICHARD E. HUDDLESTON
Administrative Law Judge